

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/24/4683

Re: Property at West Hattrick Cottage, Craigbet Road, Bridge of Weir, PA11 3SF (“the Property”)

Parties:

RCB Property Services Ltd, Hattrick Farm, Craigbet Road, Bridge of Weir, PA11 3SF (“the Applicant”)

Ms Christina Barbi, West Hattrick Cottage, Craigbet Road, Bridge of Weir, PA11 3SF (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an eviction order should be granted

Background

1. This is a Rule 109 application for an eviction order under ground 12. The Applicant representative lodged a private residential tenancy agreement between the parties commencing on 1st April 2020, notice to leave with evidence of service, rent statement, correspondence between the parties, and section 11 notice with evidence of service.
2. By email dated 13th June 2025, the Respondent lodged written representations opposing the order. These were provided to Tribunal Members on the morning of the Case Management Discussion.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 16th June 2025. Both parties were in attendance. The Applicant was accompanied by Ms Louise Wark, who has been responsible for drafting and issuing paperwork. The Applicant was represented by Mr Joe McKenzie, Hames Estates. The Respondent said she had made a payment in January 2024, which meant ground 12 was not met at the time of service of the notice

to leave. The Respondent claimed to be withholding rent for repairing issues. The Respondent claimed it would not be reasonable to evict her due to her family circumstances. The application was set down for a hearing. A Direction dated 16th June 2025 was issued to the Respondent in the following terms:

The Respondent is required to provide:

- 1. Evidence to show the payment of rent in January 2024. The Respondent should be aware that this evidence must show that the payment was made by the Respondent to the Applicant. The screenshot on page 83 of the casefile is not considered to be evidence that the payment was actually made.*
- 2. A breakdown of any sum sought by way of rent abatement, broken down by issue and period of time during which the Respondent did not have full enjoyment of the Property, and showing the percentage of rent claimed for each issue and period.*

The said documentation should be lodged with the Chamber no later than close of business on 21 days after issue of this Direction.

4. The Respondent did not comply with the Direction.
5. Notification of a hearing to take place on 16th October 2025 was served upon the parties by letter dated 27th August 2025.
6. By email dated 16th October 2025, sent at 9.31am, the Respondent lodged written submissions and stated she would not be present at the hearing and intended to remove from the Property on 10th November 2025. The Respondent included allegations of damage to her vehicle by an employee of the Applicant, and the reporting of several incidents to the police. The Respondent made allegations concerning the behaviour of the Applicant. The email was circulated to Members and the Applicant shortly before the hearing.

The Hearing

7. A hearing took place by telephone conference on 16th October 2025. The Applicant was accompanied by Ms Louise Wark, who has been responsible for drafting and issuing paperwork. The Applicant was represented by Mr Joe McKenzie, Hames Estates.
8. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 24(1) had been satisfied in respect of the Respondent. The Tribunal considered it was appropriate to proceed with the application in the absence of the Respondent.
9. Mr McKenzie confirmed the Applicant was seeking an eviction order.

10. Ms Wark explained that the January 2024 payment had not been received by the Applicant, referring to bank statements and correspondence within the case file to substantiate this matter.
11. Mr McKenzie and Ms Wark confirmed there was no notification of repairs by the Respondent. The last inspection of the Property took place in June 2023 and the Respondent has not allowed access for an inspection since that date.
12. Responding to questions from the Tribunal as to why the pre-action protocol had not been followed on behalf of the Applicant, Ms Wark said she was unaware of it. She had tried to arrange a meeting with the Respondent to discuss the arrears and how they may be addressed, but the Respondent had not come back to her. Mr McKenzie said he was aware of it but he had not really had to deal with it in the past.
13. Responding to questions from the Tribunal as to whether there had been any contact from the local authority, the Applicant representatives said there had not been any contact, but they believed the Respondent may already have been rehoused to a local authority property. Neighbours have informed the Applicant representatives that the Respondent and her family have left the Property but are returning regularly and putting on lights and leaving the television on all night. Their belongings remain within the Property. Mr McKenzie said evidence in this regard was submitted to the Tribunal on 10th October 2025, however, no such evidence was received by the Tribunal. Due to police involvement at the instigation of the Respondent, the Applicant has been wary of approaching the Property to ascertain whether the Respondent is still in occupation, but it has been noticed that furniture remains within the Property. The Respondent has not responded to emails from the Applicant representatives to attempt to ascertain the current position. The police have confirmed repeatedly that there is no ongoing investigation, contrary to assertions made by the Respondent. The keys have not been returned by the Respondent. Current arrears are £14,250.

Findings in Fact and Law

14.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property which commenced on 1st April 2020 at a monthly rent of £750.
 - (ii) The Applicant has served a Notice to Leave upon the Respondent.
 - (iii) The Respondent has accrued rent arrears.
 - (iv) The Respondent has been in rent arrears for three or more consecutive months.

- (v) The Respondent being in rent arrears is not as a result of a delay or failure in the payment of a relevant benefit.
- (vi) The Applicant has not complied with the pre-action protocol.
- (vii) It is reasonable to grant an eviction order.

Reasons for Decision

15. Ground 12 of Schedule 3 of the Act provides that it is an eviction ground if the tenant has been in rent arrears for three or more consecutive months. The Tribunal may find that this applies if for three or more consecutive months the tenant has been in rent arrears and the Tribunal is satisfied that it is reasonable on account of that fact to issue an eviction order. The Tribunal is satisfied that no rent payment was made in January 2024, and that the notice to leave is, therefore, valid. No evidence to support this contention was submitted by the Respondent, who failed to comply with the Tribunal's Direction. The Tribunal is satisfied ground 12 has been established.
16. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider whether the tenant's being in arrears of rent over that period is wholly or partly a consequence of a delay or failure in the payment of a relevant benefit. There was no evidence before the Tribunal that the Respondent was in rent arrears as a result of a delay or failure in the payment of a relevant benefit.
17. In deciding whether it is reasonable to issue an eviction order, the Tribunal is to consider the extent to which the landlord has complied with the pre-action protocol prescribed by the Scottish Ministers in regulations. No pre-action correspondence was served upon the Respondent. The Tribunal considers this to be a serious omission on the part of the Applicant, and this was considered further when considering reasonableness.
18. In considering whether it was reasonable to grant the eviction order, the Tribunal considered the circumstances of both parties.
19. The Respondent has accrued substantial rent arrears, which are rising. The Respondent did not see fit to attend the hearing or comply with the Direction. The Tribunal noted that the Respondent covered none of the matters raised in her note of defence when contacting the Tribunal on the morning of the hearing. An inference can be drawn from this to suggest there was no available evidence that the January 2024 payment had been made or that rent was withheld due to repairing issues. The Tribunal took into account the previous submissions made that the Respondent's children have health issues, but no evidence was provided to substantiate this or to indicate the effect of eviction upon the Respondent and her family. The Tribunal was unable to give weight to the rumours that the Respondent has already left the Property. The Respondent has not notified the Applicant that this is the case or returned the keys.

20. The Tribunal considered the Applicant is entitled to receive rent lawfully due. He has not received this rent. The arrears are substantial, and the Respondent's failures in this regard mean the arrears are likely to continue to rise if no order is granted.

21. The Tribunal considered it was regrettable and serious that no pre-action correspondence had been issued to the Respondent, however, the Tribunal accepted the evidence that Ms Wark had attempted to meet with the Respondent to discuss matters, and the Respondent had failed to agree to this course of action.

22. In all the circumstances, the Tribunal considered it was reasonable to grant the order sought.

Decision

23. An order for possession in respect of the Property is granted. The order is not to be executed prior to 12 noon on 17th November 2025.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

H Forbes

Legal Member/Chair

16th October 2025
Date